IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.6065 OF 2006

Shri Rajendra Madhukar Chorge ..Petitioner

Vs.

The Cheif Officer, Satara
Municipal Council, Satara. ..Respondents
& Ors.

Mr. A.V. Anturkar, for the Petitioner i/b. Shri Sugandh B. Deshmukh.
Mr. P.P.Chavan, for Respondent No.1
Mrs. S.S. Bhende, A.G.P. for respondent No.2.

CORAM : F.I. REBELLO &
R.V. MORE,JJ.
DATED : 23RD JANUARY, 2007

P.C.

. Rule. Heard forthwith.

2. The petitioner approached this Court against the order dated 29th March, 2006 whereby the stop work notice has been issued to the petitioner on the ground that prior permission of the Collector of Satara has not been taken. The Development permission which was issued on 11th April, 2005 under condition No.5 the translation of which reads as under;-

> "For the purpose of commencing construction the permission if required then prior permission should be taken from the Collector, Satara."

A second notice was also issued on 4th April, 2006 setting out that considering the land is B-holding the permission of the Collector is required. The petitioner in fact has applied to the Collector for permission.

3. At the hearing of this petition on behalf of the petitioner it is contended that the powers have been conferred on the Chief Officer by virtue of Section 152 of the M.R.T.P. Act. However, no power is conferred by Section 54 of the MRTP Act. It is only under Section 54 that the stop work notice can be issued. The power under Section 54 is on the planning authority and consequently the notice issued by respondent NO.1 is without authority of law.

4. It is submitted that under Clause 5 of the development permission only contemplates that if permission is to be taken if required. The petitioner, it is pointed out, purchased the land in auction for residential purpose. If there be violation of any term and condition of the Agreement by which the land was sold to the petitioner it is always open to the respondent No.1 to take action. Respondent No.1, it is submitted, could not under those circumstance issue the notice even assuming that the petitioner applied to the Collector for the permission.

5. Considering the contention advanced in our opinion

respondent NO.1 can neither issue the notice date dated 29th March, 2006 or the consequential notice of 4th April, 2006. The power to issue stop work notice can only be located under Section 54 of the MRTP Act. The notice dated 29th March, 2006 is, therefore, without authority of law and consequently the order dated 4th April, 2006 is also without authority of law. The orders, therefore, are liable to be quashed and set aside.

6. It is, however, made clear that it will always be open to the respondent NO.1 and/or respondent NO.2 to take such steps in law which they are entitled to and the passing of this order will not stand in their way.

7. In the light of that Rule made absolute in terms of prayer clause (a) subject to what we have set out earlier. In the circumstances of the case there shall be no order as to costs.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**